S. HRG. 100-860

NOMINATION OF DON E. NEWQUIST, RONALD A. CASS AND SALVATORE R. MARTOCHE

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

NOMINATION OF

DON E. NEWQUIST AND RONALD A. CASS TO BE COMMISSIONERS FOR THE U.S. INTERNATIONAL TRADE COMMISSION AND SALVATORE R. MARTOCHE TO BE ASSISTANT SECRETARY (ENFORCEMENT) OF THE TREASURY

AUGUST 4, 1988

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NOMINATION OF DON E. NEWQUIST, RONALD A. CASS, AND SALVATORE R. MARTOCHE

THURSDAY, AUGUST 4, 1988

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:41 p.m. in Room SD-215, Dirksen Senate Office Building, the Honorable Spark M. Matsunaga (chairman of the subcommittee) presiding.

Present: Senators Matsunaga, Bentsen, Packwood, and Chafee.

[The press release announcing the hearing follows:]

[Press Release No. H-34, July 22, 1988]

FINANCE SUBCOMMITTEE TO HOLD HEARING ON NOMINATIONS OF NEWQUIST AND CASS FOR ITC; MARTOCHE FOR TREASURY

WASHINGTON, DC.—Senator Spark Matsunaga, (D., Hawaii) Chairman of the Finance Subcommittee on International Trade, announced Friday that the Subcommittee will hold a hearing to review the nominations of Don E. Newquist and Ronald A. Cass to be Commissioners for the United States International Trade Commission. The Subcommittee will also review the nomination of Salvatore R. Martoche to be Assistant Secretary (Enforcement) of the Treasury.

The hearing is scheduled for Thursday, August 4, 1988, at 2:30 p.m. in Room SD-215 of the Dirksen Senate Office Building.

Mr. Newquist is currently the Senior Vice President of Corporate Relations for the Valero Energy Corporation in San Antonio, Texas. Mr. Cass is a Professor of Law at Boston University in Boston, Massachusetts, and Mr. Martoche is presently serving as Acting Assistant Secretary (Enforcement), in the U.S. Department of the Treasury.

OPENING STATEMENT OF HON. SPARK MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII, CHAIRMAN OF THE SUBCOMMITTEE

Senator MATSUNAGA. The subcommittee will come to order. We are today holding hearings on the nominations of Mr. Newquist, Mr. Martoche, and Mr. Cass.

To introduce our first witness is the chairman of the full committee, Senator Bentsen.

[The prepared statement of Senator Matsunaga appears in the appendix.]

OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM THE STATE OF TEXAS, CHAIRMAN, SENATE COMMITTEE ON FINANCE

The CHAIRMAN. Thank you very much, Chairman Matsunaga. It is a great deal of pleasure for me to introduce a good friend of mine from San Antonio, Texas, Don Newquist. He has been nomi-

nated by the President to be a Commissioner of the International Trade Commission.

Don's experience includes serving as Senior Vice President of the Valero Energy Corporation; General Manager of the Denver Chamber of Commerce; and service in the U.S. Navy. He has served on many civic and charity boards in San Antonio.

I think one of the interesting things about him is that he has a business background, and I think that is an important addition to the commission. Much of the commission's work involves making judgments about the condition of American business, and I believe it will help in the administration of our trade laws to have someone on that job on that commission who has a business perspective.

That experience in business will help build the business community's confidence in the commission, which frankly I think is in pretty bad shape today.

One of the things we are trying to do in the trade bill is to bring our trade actions back under the law, rather than taking action ad hoc. We want businesses proceeding under Section 201 when they are injured by imports, rather than looking for voluntary restraint agreements on a political basis.

Don Newquist's appointment will help in that regard.

I also expect that his business experience will help other members of the commission who don't have that same background.

Under Section 201, the commission is called on to make judgments on adjustment measures as well as serious injury. You cannot decide questions like that just by applying a formula to the cases; some of those things don't fit into neat parameters such as that.

You need someone with a background to make an objective judgment about those kinds of matters. And I feel that Don Newquist can do that, and that his ability to work with other people will enable him to influence other commissioners with his perspective on these matters. I will be watching.

The most fundamental quality of an ITC commissioner is that he be jealous of the commission's independence. I think what we have seen is that in every White House that has come along in every Administration, The White House staff has tried to put the arm on the commissioners.

That is why the commission's budget comes directly to us, without going through the Office of Management and Budget. And that is why the commission can use its own lawyers to defend its decisions in court, rather than the Justice Department lawyers. The purpose is to guard the Commission's independence.

Now, I have discussed this question of independence with Don Newquist, and he is clear on the need for making his decisions on an objective basis, completely independent of The White House, whichever Administration that might be in the future, or this one; and that is just absolutely fundamental to this job.

I am pleased to present to the committee Mr. Don Newquist.

Senator MATSUNAGA. Also introducing Mr. Newquist is the Hon. J. Bennett Johnston, Senator from the State of Louisiana.

STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Mr. JOHNSTON. It is an honor and a pleasure to introduce to you today my good friend Don E. Newquist of Austin, Texas. Don has been appointed by the President to an additional term as member of the U.S. International Trade Commission.

In a week when congressional attention has been focused on the trade bill and on the idea of competitiveness, it is appropriate that we consider for the International Trade Commission someone who will bring to the ITC a strong business background and a clear understanding of market forces in a world economy.

In his career with the U.S. Chamber of Commerce, as well as the Denver and Corpus Christi chambers, and most recently, from 1974 to the present, with Valero Energy Corporation of San Antonio, Don has demonstrated the breadth and depth of his organizational and administrative skills. At Valero, he has served as vice president for administration, charged with planning and directing the company reorganization and relocation from Houston to San Antonio, and since 1982, as senior vice president, corporate relations, responsible for government, media, community, investor and employee relations.

Don's extensive knowledge of and experience with energy issues will undoubtedly be an asset to the Commission. This is an aspect of international trade which is vital to America's national defense as well as our economic well-being.

I know Don Newquist as a man of integrity and conscience. He has donated his time and talent to a wide variety of charitable and community organizations including the San Antonio Arts Council and the World Affairs Council. He is active in his church and serves on the board of directors of the Lutheran General Hospital Foundation. He is, in every sense, a good citizen and a skilled manager who will, I am sure, serve with distinction on the International Trade Commission.

Senator MATSUNAGA. Thank you very much, Senator Bentsen and Senator Johnston. Are you prepared to make an opening statement?

Senator PACKWOOD. No statement.

Senator MATSUNAGA. No statement at all? Do you have any questions you would like to put to Mr. Newquist?

The CHAIRMAN. I have already asked him all the questions I need to ask him. Thank you very much.

Senator MATSUNAGA. Thank you very much. Mr. Newquist, as you know, you will be filling a very important position, which, as the chairman of the full committee has said, would require some business sense. And the fact that you have had business experience, I think, will add much to the commission on which you will be serving.

We are prepared to listen to any statement you may have at this time.

STATEMENT OF DON E. NEWQUIST, SENIOR VICE PRESIDENT, CORPORATE RELATIONS, VALERO ENERGY CORP., SAN ANTONIO, TEXAS; NOMINEE TO BE COMMISSIONER, U.S. INTERNATIONAL TRADE COMMISSION

Mr. NEWQUIST. Thank you, Senator Matsunaga. I would like to thank you as chairman of the subcommittee for holding this hearing today and certainly to the chairman of the full committee and my good friend from Texas. It is always a pleasure to be with him.

I don't have any prepared statement. I would just like to say that it is certainly an honor for me to be of service to this Government. I thank The White House and The White House staff for the courtesies that they have shown to me as well as the staff of this committee and the staff of many of the members of the Finance Committee.

I take it as a very serious charge; and as the chairman said, it will hopefully bring a degree of business acumen to the Commission. And we would be delighted to answer any of the members of the committee's questions.

Senator MATSUNAGA. Any questions?

OPENING STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator PACKWOOD. As I said long ago, any friend of the chairman's is a friend of mine. [Laughter.]

I have no questions.

The CHAIRMAN. Thank you very much.

Senator MATSUNAGA. I must congratulate you, Mr. Newquist. An introduction by the chairman of the full committee means everybody else just shuts up, and I, too. [Laughter.]

Thank you very much.

Mr. NEWQUIST. Let me say also we are very proud of Senator Bentsen in Texas. So, it is certainly a personal honor for me for him to be present today and his generous introduction.

The CHAIRMAN. Thank you very much.

Mr. NEWQUIST. Thank you, gentlemen.

Senator MATSUNAGA. Thank you. Our next witness is Mr. Salvatore R. Martoche. Please proceed.

STATEMENT OF SALVATORE R. MARTOCHE, ACTING ASSISTANT SECRETARY (ENFORCEMENT), U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC; NOMINEE TO BE ASSISTANT SECRETARY OF THE TREASURY (ENFORCEMENT)

Mr. MARTOCHE. Thank you. I have, with your permission, a brief statement that I would like to make, Mr. Chairman.

Senator MATSUNAGA. Please proceed.

Mr. MARTOCHE. I want to thank you and the other members of the committee for this opportunity to be here. I am really excited to be nominated as Assistant Secretary for Enforcement at the Treasury Department; and I want to express my gratitude for your expediting this hearing at a very busy time for you.

And I wish to take this opportunity to thank the staffs—both staffs—for their cooperation and assistance during the past month.

I am proud of my service to the Federal Government. I have been privileged to be nominated and confirmed on two prior occasions, first as United States Attorney for the Western District of New York in 1982 and then again in 1986 as Assistant Secretary of Labor for Labor Management Standards.

I hope to answer all of your questions forthrightly and as completely as I possibly can; but again, it is a pleasure and an honor for me to be here. I would like the committee to note that my wife, Mary Dee, and my oldest daughter, Amy, are here with me today, and I am hopeful that, in view of that, you will be nicer to me than you might otherwise have been. [Laughter.]

Senator MATSUNAGA. Will Mrs. Martoche and daughter rise and be recognized?

[Applause.]

Mr. MARTOCHE. Thank you, Mr. Chairman.

Senator MATSUNAGA. Do you have any questions?

Senator PACKWOOD. You have an exemplary record. We will be nice to you now. This is not normally the difficult time; it is when you come up here the first time to explain why you have defended a cut in the Customs Service budget or taken agents away from Portland, Oregon, or something like that. [Laughter.]

Mr. MARTOCHE. I don't believe that I would ever take agents away from Portland, Oregon, Senator. [Laughter.]

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. What about Providence?

Mr. MARTOCHE. It's one of my favorite places. [Laughter.]

Senator CHAFEE. Not exactly a direct answer, though. [Laughter.]

Senator PACKWOOD. I have no questions, Mr. Chairman.

Senator MATSUNAGA. Any questions, Senator Chafee?

Senator CHAFEE. No questions, Mr. Chairman.

Senator MATSUNAGA. I must say you have a very impressive resume; and I think, with a resume such as that which you have presented to the committee, I don't see how we can turn you down, but you never know. [Laughter.]

Senator MATSUNAGA. I thank you for your appearance here today.

Mr. MARTOCHE. Thank you very much, Mr. Chairman.

Senator MATSUNAGA. And good luck to you.

Mr. MARTOCHE. Thank you very much.

Senator MATSUNAGA. Our next witness is Mr. Ronald A. Cass, Professor of Law, Boston University, Boston, Massachusetts. Mr. Cass, we will be happy to hear from you.

STATEMENT OF RONALD A. CASS, PROFESSOR OF LAW, BOSTON UNIVERSITY, BOSTON, MA; NOMINEE TO BE COMMISSIONER, U.S. INTERNATIONAL TRADE COMMISSION

Mr. CASS. Thank you very much, Mr. Chairman, and thank you, members of the committee and staff. I have no prepared statement. I would like to say that I am greatly honored to have been nominated for this position and honored to be here.

I recognize that the International Trade Commission has a special relationship with this committee, and I will do everything I can to foster and improve that relationship.

I have my family with me here today, my wife and my parents; and I would like to simply introduce them.

Senator MATSUNAGA. Yes. Will you have them rise and be recognized?

[Applause.]

Mr. CASS. I will be very happy to answer any questions you have, sir.

Senator MATSUNAGA. Any questions? Senator Packwood?

Senator PACKWOOD. I have just a couple. I think I agree with your approach, but I want to make sure I understand. Tell me about your theory on elasticities of demand in terms of determining injury.

Mr. CASS. I do look at elasticities of demand in analyzing injury—elasticity of demand is simply an estimation or an inference as to the way in which purchasers respond to changes in price—in order to assess the price effects of unfair imports.

I think the law instructs me that I have to look at those effects very carefully. I look at all the information in the record, including estimates on elasticities from our Office of Economics.

Senator PACKWOOD. Now, does that mean that, if there is more foreign competition and more goods come in and the price goes down and more people might therefore buy the goods that there is less likely to be injury than if the price didn't go down and more people bought the goods?

Mr. CASS. No.

Senator PACKWOOD. It doesn't mean that?

Mr. CASS. No, it doesn't.

Senator PACKWOOD. What does it mean?

Mr. CASS. It means, in looking at the way the prices respond when the foreign imports come in, one takes into account the likelihood that as the market—the purchasers—see the foreign goods coming in and they think that these are goods that they really think are wonderful substitutes for the American goods, if they buy them in increased quantities, there is more injury. If the goods turn out to be not very good substitutes for the American goods, there is likely to be less injury.

Of course, it doesn't take all that much injury to satisfy the standard in the law.

Senator PACKWOOD. I was thinking if you sold 10 items in the country and you had foreign competition and the price went down and you sold 20 and the American manufacturer still sold 10, they would have a harder time proving injury.

Mr. CASS. They might have a harder time, but they could still certainly—if they could have made those sales—prove injury.

Senator PACKWOOD. That is kind of a post hoc argument though. If the items are selling for $1.00 apiece and they are only selling 10 and the sales only go up to 20 when they go down to 50 cents apiece, how do they prove that they would have gotten the price down to 50 cents so that they would have sold 20 of them?

Mr. CASS. They don't have a burden of proof to show that the price would have dropped.

Senator PACKWOOD. No, I know that.

Mr. CASS. If they show that they have increased capacity and that their costs are such that they can compete with those imports, then that can make the showing under the law.

Senator PACKWOOD. Now, let me ask you about the 15 times you have voted in dumping/countervailing cases since you have been there. Is it true that you have voted to find injury 13 times?

Mr. CASS. Yes, that is, Senator.

Senator PACKWOOD. And in only one of those did you fail to vote with the majority.

Mr. CASS. That is correct also, Senator.

Senator PACKWOOD. And in one other case, in a Section 201 case, in which you participated—and which involved knives—and did not find injury, it was a unanimous decision; everybody on the commission agreed with you.

Mr. CASS. That is absolutely correct, Senator.

Senator PACKWOOD. So, if somebody—at least looking at your record since you have had this interim appointment—were to try to make a case that you just have a blind spot against finding any injury, your votes certainly would not indicate that.

Mr. CASS. That is my belief.

Senator PACKWOOD. Thank you, Mr. Chairman. I have no other questions.

Senator MATSUNAGA. Is Senator Chafee coming back?

[No response.]

Senator PACKWOOD. Senator Heinz has some questions for the record. Could I simply submit them and have Mr. Cass answer them?

Senator MATSUNAGA. Without objection, so ordered.

Senator PACKWOOD. Thank you.

Mr. CASS. I would be happy to do that.

[Senator Heinz' questions appear in the appendix.]

Senator MATSUNAGA. It appears that whatever questions I had in mind have been asked by Senator Packwood. If there are any further questions I would like to have answered, I, too, will submit them in writing.

You have a very impressive resume, too, I must say; but being in Boston, why did you not go to Harvard? [Laughter.]

Mr. CASS. I was attracted by the weather at the University of Chicago. I used to do my winters there and my summers here in Washington. [Laughter.]

Senator PACKWOOD. I may want to reconsider my vote. [Laughter.]

Senator MATSUNAGA. Presently, you are lecturing at Boston University, are you not?

Mr. CASS. Yes, they made me a better offer. [Laughter.]

Senator MATSUNAGA. You can see that, although my wife did go to Boston University, I went to the other one, which is not too well known, I suppose.

Senator PACKWOOD. What is the other one? Boston College?

Senator MATSUNAGA. Harvard.

Senator PACKWOOD. Oh, Harvard.

Senator MATSUNAGA. You see, it is not well known. [Laughter.]

Unless there are any further questions, I want to congratulate you upon your nomination for continued service on the ITC; and good luck to you.

Mr. CASS. Thank you very much, Mr. Chairman.

Senator MATSUNAGA. Thank you. The hearing is concluded.

[Whereupon, at 2:59 p.m., the hearing was concluded.]

APPENDIX

Alphabetical List and Material Submitted

STATEMENT OF THE HONORABLE SPARK MATSUNAGA
HEARING OF THE INTERNATIONAL TRADE SUBCOMMITTEE
ON NOMINATIONS TO THE INTERNATIONAL TRADE COMMISSION
AND THE U.S. TREASURY DEPARTMENT

AUGUST 4, 1988
WASHINGTON, D.C.

THIS AFTERNOON THE SUBCOMMITTEE ON INTERNATIONAL TRADE WILL CONSIDER THE NOMINATION OF THREE INDIVIDUALS TO SENIOR POSITIONS IN OUR GOVERNMENT WITH RESPONSIBILITIES REGARDING INTERNATIONAL TRADE.

TWO OF TODAY'S NOMINEES HAVE BEEN NOMINATED TO FILL POSITIONS ON THE INTERNATIONAL TRADE COMMISSION. THE ITC HAS THE IMPORTANT RESPONSIBLITY OF DETERMINING WHEN MATERIAL INJURY, OR THE THREAT THEREOF, HAS BEEN SUFFERED BY AN AMERICAN FIRM OR INDUSTRY IN CASES INVOLVING PETITIONS FILED UNDER TITLE VII OF THE TARIFF ACT OF 1930, THAT IS, UNDER OUR ANTI-DUMPING AND COUNTERVAILING DUTY LAWS. IN ADDITION, THE COMMISSION IS EMPOWERED TO BAR THE IMPORTATION OF GOODS THAT VIOLATE U.S. PATENTS, COPYRIGHTS AND TRADEMARKS.

THE CONGRESS AND THE EXECUTIVE BRANCH ALSO RELY ON THIS INDEPENDENT AGENCY TO PROVIDE A COMPREHENSIVE AND OBJECTIVE ANALYSIS OF CONTEMPLATED TRADE POLICY ACTIONS. FOR EXAMPLE, THE COMMISSION IS CURRENTLY COMPILING A REPORT IN RESPONSE TO A SENATE FINANCE COMMITTEE REQUEST ON A FREE TRADE AGREEMENT WITH JAPAN, AND PROVIDING THE U.S. TRADE REPRESENTATIVE WITH INFORMATION FOR USE IN THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS. IT SHOULD BE EVIDENT FROM THIS LIST OF RESPONSIBILITIES THAT A COMMISSIONER NEEDS A BROAD RANGE OF KNOWLEDGE IN ORDER TO MEET THE DEMANDS OF HIS POSITION.

AS THE NOMINEE FOR THE POSITION AT THE TREASURY DEPARTMENT IS PROBABLY WELL AWARE, THE FINANCE COMMITTEE HAS NOT ALWAYS BEEN PLEASED WITH THE HANDLING OF THE RESPONSIBILTIES OF THE CUSTOMS SERVICE DURING THE REAGAN ADMINISTRATION. THE FINANCE COMMITTEE HAS FOR SEVERAL YEARS FELT IT NECESSARY TO INCREASE THE BUDGET AUTHORIZATION REQUESTED BY THE ADMINISTRATION FOR THE OPERATION OF THE CUSTOMS SERVICE TO ENSURE THAT IT HAD THE RESOURCES TO MEET ITS NEEDS. MEMBERS OF THE SUBCOMMITTEE WILL PROBABLY HAVE QUESTIONS REGARDING YOUR VIEWS ON PROPER MANAGEMENT OF THE CUSTOMS SERVICE DURING THE REMAINING MONTHS OF THIS ADMINISTRATION.

RONALD A. CASS

Current Position: Commissioner, United States International Trade Commission; Professor of Law, Boston University (on leave, 1987-88).

Education: J.D. (Honors), University of Chicago, 1973. Order of the Coif; Comment Editor, University of Chicago Law Review; Joseph Henry Beale Prize for Research and Writing.

B.A. (High Distinction), University of Virginia, 1970. Phi Beta Kappa; Phi Eta Sigma; Raven Society; Echols Scholar.

Principal Employment: Commissioner, United States International Trade Commission, 1988- .

Boston University, Professor of Law, 1983- ; Associate Professor, 1981-1983.

University of Virginia, Assistant Professor of Law, 1976-1981. Sesquicentennial Associate, Center for Advanced Studies, Charlottesville, Virginia, 1980-1981.

Associate, Arent, Fox, Kintner, Plotkin & Kahn, private practice, Washington, D.C., 1974-1976.

Law Clerk to Hon. Collins J. Seitz, Chief Judge, U.S. Court of Appeals for the Third Circuit, Wilmington, Delaware, 1973-1974.

Related Professional Activities: Legal Advisor, Federal Communications Commission Office of Plans and Policy, 1987-1988.

Consultant to Administrative Conference of the United States, 1980-1983, 1984-1987.

Consultant to American Trial Lawyers' Association, 1985-1987.

Consultant to Helsell, Fetterman, Martin, Todd & Hokanson, Seattle, Washington, on Washington Public Power Supply System Litigation, 1984-1985.

Consultant to Aspen Institute for Humanistic Studies, Program on Communications, 1977.

Northwestern Virginia Health Systems Agency, Board of Directors, 1980; Chairman, Subarea Health Advisory Council, 1980-1981; Council Vice-Chairman, 1979-80; Council Board of Directors, 1978-1981.

Association of American Law Schools, Section of Administrative Law, Chairman, 1987-1988; Executive Council, 1983-1988.

American Law Institute, Member, 1983- .

Subjects Taught: Administrative Law; Communications Law; Constitutional Law; Criminal Law; First Amendment; Health Care Regulation; Intellectual Property; Regulated Industries; Telecommunications Regulation.

Writings: Books:

Administrative Law: Cases and Materials, with Colin S. Diver (Little, Brown & Co., Boston, Mass. 1987).

Revolution in the Wasteland: Value and Diversity in Television (University Press of Virginia, Charlottesville, Va. 1981).

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Pay Cable and Closed Circuit Movies: No Room in the Wasteland, 40 University of Chicago Law Review 600 (1973)(Student Comment).

Government Contract Bid Protests: Judicial Review and the Role of the Court of Claims, 39 University of Chicago Law Review 817 (1972)(Student Comment).

Presentations and Professional Programs: Speaker, "Language and Law-Making: The Law-and-Economics Debate," George Mason Law Faculty Workshop, Arlington, Virginia, April 1988.

Speaker, "Standard Setting and Noerr-Pennington Immunity from Antitrust Liability," ABA Antitrust Law Section Annual Meeting, Washington, D.C., March 1988.

Participant, "Trans-Atlantic Cooperation in Television Broadcasting," Council for the United States and Italy, Rome, Italy, March 1988.

Speaker, Breakfast-at-the-Bar, ABA International Law Section, Washington, D.C., March 1988.

Speaker, World Trade Forum, Washington, D.C., February 1988.

Speaker, "An Incentive Analysis of Libel Law," Georgetown University Law and Economics Seminar, February 1988.

Panelist, "Interstate Price Cap Regulation: Where Do We Go From Here?," KMB Video Journal, Cambridge, Massachusetts, January 1988.

Panelist, "Privatization: Implications for Administrative Structure and Function," Association of American Law Schools, Administrative Law Section, Miami Beach, Florida, January 1988.

Speaker, "Municipal Liability: Overview," Second American Bar Association National Institute on Municipal Liability, Las Vegas, Nevada, October 1987.

Speaker, "Constitutional and Economic Perspectives on Regulation of Commercial Speech," University of Cincinnati Conference on Regulation of Commercial Speech, Cincinnati, Ohio, October 1987.

Panelist, "Free Speech and Advertising: Who Draws the Line?," Institute for Democratic Communication, Boston, Massachusetts, April 1987.

Speaker, "Privatization: Forms, Limits, and Relation to a Positive Theory of Government," Law and Economics Center and Liberty Fund Seminar, Arlington, Virginia, March 1987.

Speaker, "Municipal Liability: Overview," American Bar Association National Institute on Municipal Liability, Orlando, Florida, November 1986.

Speaker, "Theories of Administrative Regulation," American Bar Association, Administrative Law Council, New York, New York, August 1986.

Speaker, United Kingdom National Committee on Comparative Law, Colloquium on Government Liability, Compensation, and the Law of Civil Wrongs, Birmingham, England, September 1985.

Speaker, Administrative Conference of the United States, Panel on Government Tort Liability, Washington, D.C., June 1985.

Speaker, "Judicial Immunity After Pulliam v. Allen," State of Rhode Island Court Education Seminar, Providence, Rhode Island, January 1985.

Participant, Liberty Fund Colloquium on Economic Foundations of Republicanism, Pine Mountain, Georgia, May 1984.

Speaker, Liberty Fund Seminar on Liberty as a Value in Constitutional Law, Williamsburg, Virginia, March 1984.

Speaker, Yale University Civil Justice Institute Workshop, New Haven, Connecticut, November 1983.

Speaker, Cornell Law School Workshop, Ithaca, New York, October 1983.

Speaker, American Society of Law and Medicine, Conference on Teaching Health Law, Boston, Massachusetts, June 1982.

Speaker, Conference on Perspectives on the First Amendment, Athens, Georgia, April 1981.

Speaker, MIT Research Program on Communications Policy, Cambridge, Massachusetts, January 1981.

Speaker, National Center for Administrative Justice, Seminar for Occupational Safety and Health Commission, Charlottesville, Virginia, November 1980.

Participant, Aspen Institute for Humanistic Studies Program on Communications, Workshop on Expanding Choices for Television Viewing, Aspen, Colorado, August 1980.

Participant, Law and Economics Center, Economics Institute for Law Professors, Key Biscayne, Florida, May 1977.

Speaker, Boston University Law Faculty Workshops, Boston, Massachusetts, 1983, 1984, 1985, 1986, 1987.

Bar Admissions: Maryland Court of Appeals, 1973; District of Columbia Court of Appeals, 1974; United States District Court for the District of Columbia, 1974; United States Court of Appeals for the District of Columbia Circuit, 1974; Supreme Court of the United States, 1977; Supreme Court of Virginia, 1979.

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RESPONSES TO QUESTIONS FROM SENATOR MATSUNAGA
FROM RONALD A. CASS

Question 1. Mr. Cass, the decision of some Commissioners to use a "unitary" analysis in making an injury determination rather than the traditional two-step approach of first determining whether an industry has suffered or is threatened with material injury and then determining whether that injury is by reason of unfairly traded imports, has been the subject of some discussion in the trade community. In the Forklift Trucks from Japan decision, you stated that you believe this approach comports more faithfully with statutory language and intent contained in Title VII. Can you please explain why you feel this way?

Answer: Title VII of the Tariff Act of 1930 directs the Commission to determine whether "an industry in the United States is materially injured . . . by reason of imports . . . of the merchandise with respect to which the Department of Commerce has made an affirmative determination" that the imports were sold at less than fair value or were unfairly subsidized. 19 U.S.C. §1671d(b)(1). The two-step approach that has been used in many Commission opinions over the past few years addresses the existence of a "material injury" apart from the relation of that injury to the unfairly traded imports. By doing so, that approach makes its initial question whether the domestic industry is performing well in comparison to other time periods. That does not, however, appear to be the question asked by the text of Title VII, which explicitly asks that the Commission determine whether less than fair value (LTFV) or subsidized imports have materially injured the domestic industry and does not ask whether the industry's financial health is improving or worsening as compared to any given period of time. Unlike the statutory language under Section 201, the provisions of the Act dealing with subsidies and dumping do not separately describe elements relevant to the determination of injury and elements relevant to the causation determination. Compare 19 U.S.C. §2251(b)(2)(A) & (C) with 19 U.S.C. §1677(7).

Further, the legislative history of Title VII indicates that Congress did not intend the Commission to reach certain determinations that are possible under the two-step approach. Such a bifurcated approach can produce a negative injury finding without regard to the effects of unfairly traded imports solely because the domestic industry was improving relative to some earlier period. That approach likewise can produce an affirmative finding predicated solely on evidence that the industry's fortunes were in decline over some period. The bifurcated approach to Title VII cases in particular makes possible the denial of relief based merely on the absence of overall deterioration in industry financial health. Congress has expressed concern about this possibility. A Senate Report commenting on the scope of United States antidumping law explicitly states that: "An industry which is prospering can be injured by dumped imports just as surely as one which is foundering although the same degree of dumping would have relatively different impacts depending upon the economic health of the industry." S. Rep. No. 1385, 90th Cong., 2d Sess. pt. 2, at 11 (1968), reprinted in 1968 U.S. Code Cong. & Admin. News 4548-49. Subsequently, in revising and reenacting the antidumping law under the Trade Agreements Act of 1979, the Senate reiterated that concern. S. Rep. No. 249, 96th Cong., 1st Sess. 87 (1979). The Court of International Trade recently has criticized the Commission for departing from the Congress' intent in this regard:

> [T]he ITC should not be engaged in a determination of whether an industry is "healthy." A "healthy" industry can be experiencing injury from importations and an "unhealthy" industry can be unaffected by importations. The purpose of the ITC's investigation is to determine whether imports are a cause of any effect on an industry which would amount to "material injury."

Republic Steel Corp. v. United States, 591 F. Supp. 640, 649 (Ct. Int'l Trade 1984), reh'g denied, 9 C.I.T. 100 (1985), dismissed (Order of August 13, 1985).

It is not inevitable that the two-step approach will conflict with the language and legislative history of the statute. Indeed, I believe that commissioners who have used the two-step approach generally apply it consistently with the statute by endeavoring implicitly to evaluate the relation of the change in domestic industry performance to the effects of the unfairly traded imports. It seems preferable, however, to make this evaluation explicit.

Finally, I should note that the practice of the Commission contemporaneous with the adoption of the particular statutory framework that guides our determinations in Title VII investigations does not support a conclusion that the statute embodies a two-step inquiry. In the period immediately following passage of the Trade Agreements Act of 1979, injury and causation often were combined under the heading "Material injury by reason of LTFV imports."1/ There was no separate section labelled "Condition of the industry" in which a conclusion was reached regarding material injury by itself.

Question 2. I'd like to ask you two questions regarding the trade bill.

A) What effect do you think the passage of the omnibus trade bill will have on the workload of the Commission? One provision in the trade bill will permit the ITC to disclose confidential business information under an administrative protective order. Do you believe this will enhance the fairness of ITC proceedings?

B) Under the new trade bill, the ITC would have an expanded role in Section 201 cases involving injury to US industries from fairly traded imports. If this new provision becomes law, the ITC will have a critical role in recommending to the President positive adjustment measures which will assist injured US industries in positively adjusting to import competition. Do you feel the Commission will be able to handle this responsibility?

Answer: (A) It is quite difficult to predict the effect of the recently passed Omnibus Trade and Competitiveness Act of 1988 on the workload of the Commission. There are several provisions in the Act that will require studies to be performed by the Commission, and the Commission will participate in creation of a national trade data bank. These may entail expenditures of Commission resources that are not now required.

1/ See, e.g., Spun Acrylic Yarn from Japan and Italy, Inv. Nos. 731-TA-1 and 2, USITC Pub. 1046 (March 1980).

The difficult aspect of your question is prediction of the new Act's effect on our investigation caseload. Over the past several years, the Commission's caseload declined significantly. Many reasons for the decline have been offered, including the general improvement of the American economy, the decline in the value of the dollar, and the increase in productivity in many sectors previously affected by import competition. The Commission's caseload has risen steadily over the past six to nine months, and the speculation on the reasons for that increase only now is beginning. Plainly, the new Act will make import relief more likely in some cases (for instance, with the elimination of an injury requirement for most cases arising under Section 337 of the Tariff Act) and more valuable in others (with new remedy provisions). While this might augur an increase in the Commission's caseload, exporters' behavior also might change in response to the new law, reducing the number of instances in which an unfair trade practice actually occurs.

Probably the most significant change affecting the Commission's investigative processes is the provision for increased disclosure, under protective order, of confidential business information. I believe that this will improve the quality of Commission decisionmaking and improve fairness to the parties. At present, parties often advance arguments before the Commission predicated on assumptions about the factual record that are incorrect. Given the facts available to the commissioners, but not disclosed to the parties, the argument may be directly contrary to the interest of the party making it. Certainly, with increased disclosure, parties will receive greater value from their investments in representation before the Commission. At the same time, the parties will be in a better position to assure that the factual record on which Commission decisions are based is complete and accurate.

(B) Yes, I believe that the Commission will be able to make reasonable and informed recommendations to the President to tailor import relief in a manner that will promote positive adjustment by domestic industry. Of course, the President is authorized by law to consider a wider array of issues in determining whether to accept our recommendation than commissioners consider in suggesting particular import relief.

Question 3. In determining whether material injury has occurred in an antidumping case, the Commission analyzes three years worth of information on the volume of imports and its price effects in the US market for like products. However, the Commerce Department only analyzes price information from the six months preceding the commencement of the investigation in calculating a dumping margin. In using a "but for" analysis of the effect of unfairly traded imports on the domestic market, how accurate is the Commission's analysis for the period in which the Commerce Department hasn't calculated a dumping margin?

Answer: I do not believe it is appropriate for the Commission to ask whether the domestic industry was injured by unfairly traded imports in a period prior to the time when, according to the Department of Commerce, the imports were sold at less than fair value. Under any method of analyzing Title VII cases, I believe that the Commission must evaluate the actual injury (or threat of such injury) from imports found to have been dumped and that the injury cannot be found to have occurred before the dumping took place.

That is one reason I believe the comparative method of analysis is preferable to one based solely on a comparison of trends in industry performance with trends in import penetration of U.S. markets. A careful comparative analysis uses information available from a period long enough to present a good picture of the manner in which purchasers and sellers of the imports and the domestic like product that competes with it respond to factors such as product price and quality in order to evaluate whether the dumped imports materially injured the domestic industry during and immediately following the period in which dumping was found to have occurred.

In contrast to this comparative or "but for" analysis, an analysis of injury from dumped imports by reference solely to trends in industry performance and import sales either must look for some material change in industry performance during the period in which imports are known to have been dumped or must assume that dumping was occurring at some earlier time and attribute deteriorating industry performance to dumped imports over that earlier period. In this regard, I should note that such a trend-oriented (non-but-for) approach to analysis of antidumping investigations becomes heavily dependent on selection of the particular time period for comparison. A recent determination of the Commission is illustrative.2/ The domestic industry's performance improved substantially over the three-year period normally examined by the Commission, including the period during which Commerce found dumping. The petitioner requested, however, that the Commission assess injury based on a comparison of subsequent industry performance with its performance four and a half years earlier. Petitioner admitted that the industry had enjoyed an uncommonly good year at that time, but urged that its performance every year since was tainted by the effects of dumping. Judged from the vantage suggested by petitioner, but not from either an earlier or a subsequent year, the domestic industry performance had fallen off rather than improved. The Commission reached an affirmative determination, with three commissioners assessing trends as requested by the petitioner without explanation of the choice of that four and a half year span and without acknowledging the respondent's arguments in opposition to that method of analysis. I also reached an affirmative determination in that investigation, but did so on the basis of an explicit analysis of the impact the dumped imports had on the domestic industry, focusing attention on information covering the period in which Commerce found dumping had occurred. I believe that my disposition of this investigation was more consistent with the statute governing these proceedings than the approach taken by the majority of my colleagues.

Question 4. The question of the use of elasticity estimates for price elasticity of demand has been the subject of recent controversy. Assuming that the Commission can develop adequate information for a model, what do you envision as the proper function of looking at elasticity in the Commission's evaluation of whether material injury has occurred?

Answer: Under Title VII of the Tariff Act of 1930, the Commission must determine whether a domestic industry is materially injured by reason of dumped or subsidized imports.

2/ Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Final), USITC Pub. 2090 (June 1988).

The statute suggests various factors that either measure injury (for example, negative effects on employment in the domestic industry or negative effects on profits or cash flow) or facilitate assessment of the effects of the imports under investigation (for example, the volume of imports). 19 U.S.C. §1677(7)(B),(C).

Elasticity estimates are not an independent factor that might indicate the existence or non-existence of material injury from dumped or subsidized imports. But elasticity estimates can assist commissioners in evaluating the connection between the unfairly traded imports and the domestic industry's fortunes. Title VII recognizes the importance of both volumes and prices of merchandise to the competition among different products. Elasticity estimates relate changes in prices to changes in volumes. Estimates of price elasticity of demand are based on the evidence of record regarding the importance to purchasers of price, as opposed to quality, immediate availability, or other product attributes or terms of sale. Where price is very important, price elasticity will be high, and price competition (which for imports might be facilitated, for example, by dumping or subsidies) will have a great effect on purchasing decisions (shifting purchases away from one supplier and to a competing, lower-priced product).

Information about the effects of changes in the prices and volumes of imports on the sales and prices of domestic like products that compete with those imports is essential to disposition of Title VII investigations in accord with the governing law. Elasticity estimates simply constitute one language for description of the factual inferences that can be drawn from the record evidence to support judgments respecting the effects of imports on domestic prices and sales required by Section 771 of the Tariff Act. This is the language generally used by economists, who are trained in the examination of markets and the analysis of effects that result from certain changes in those markets. The Commission's Office of Economics assists commissioners in Title VII investigations by analyzing the evidence respecting operation of the markets at issue and by estimating a range of elasticities for demand, for substitution between imported and domestically produced products, and for supply of these products. These estimates can be used to assess the sorts of changes in prices, sales, and production that could reasonably be inferred from the record to have been produced by related changes in the price of imported and domestic products.

It has been recent Commission practice to provide these estimates to parties, as well as to commissioners, and to solicit comments from parties, who might believe that particular ranges of elasticities estimated by the Office of Economics are based on erroneous information or are for other reasons incorrect. Generally parties have found the estimates to be reasonable. When objections are raised, these are considered by the Office of Economics before adoption of its final memorandum on elasticities, and these objections also are made available to commissioners in parties' post-hearing submissions. Of course, any commissioner might conclude that other record information is in conflict with the ranges estimated by the Office of Economics in a given investigation and is more probative of the manner in which participants in the particular markets examined respond to changes in the price of products relevant to the investigation. Given the care with which the Office of Economics prepares its estimates and the breadth of the elasticity ranges that are estimated, however, I would expect this to be a rare occurrence.

Nonetheless, in some investigations I have drawn such a conclusion from the record before me.

Question 5. Another Commissioner questions whether a "but for" analysis of material injury is consistent with United States' obligations under Article 3 of the GATT Anti-Dumping Code. Article 3 requires that a material injury finding be based upon positive evidence of dumping. Do you believe ITC determinations of material injury on a "but for" analysis meet this standard?

Answer: Yes. The comparative or "but for" analysis of material injury from dumped imports is based on the facts and evidence in the record of our investigations every bit as much as other analyses of that issue. I believe that there is absolutely no legal question respecting my analysis on that score. As I indicated in my response to Question 3., however, other approaches that have been taken have not been so clearly predicated on positive evidence of dumping.

RESPONSES TO QUESTIONS FROM SENATOR HEINZ
FROM RONALD A. CASS

First Set of Questions and Responses.

Question 1) Please explain the method of analysis you are using.

Answer: In all cases, I begin by looking at the text of the legal provision applicable to the matter before me. I also look at the relevant legislative history and precedents. I apply the legal rule established by these authorities to the facts of the investigation before the Commission. To determine the facts, I look not only at the testimony presented in the Commission hearing, but also at the briefs of the parties to the proceeding, and at the reports and analyses from the Commission's staff.

Most of the proceedings that have come before the Commission during my term here have been antidumping investigations under Title VII of the Tariff Act of 1930, as amended. In these investigations, the Commission is directed to consider all economically relevant factors that shed light on whether a domestic industry is materially injured by reason of the class of imported merchandise the Department of Commerce has determined to have been sold at less than fair value (LTFV), including sixteen specifically enumerated factors. 19 U.S.C. §1677(7)(B), (C). The factors specified in the statute indicate Congress' intent that the Commission assess the effect of LTFV imports on the economic vitality of the domestic industry and also suggest various factual inquiries that should facilitate that assessment. I read the statute, in light of the text, its legislative history, and the relevant judicial and Commission precedents, and especially the factors given by the statute and the order in which they are listed in the statute, to suggest that the Commission's inquiry must focus on three areas when it considers the causation of material injury. First, the Commission must examine volumes and prices in the U.S. market

for the imports subject to its investigation. Second, the Commission must evaluate the manner in which the sale of the subject imports affects domestic prices and domestic production of the like product. Third, the Commission must assess the manner in which LTFV sales have affected the domestic industry and assess the significance of such effects, which must be at least "not inconsequential, immaterial or unimportant" to support an affirmative determination. 19 U.S.C. §1677(7)(A).

I believe that this analysis, as is true for any analysis of causation, must be comparative in nature. To understand what effect the less than fair value imports in fact had on the domestic industry's prices, sales, profits, employment, and so on, one must in some fashion ask what those prices, sales, profits, employment, etc., figures would have been had there not been sales at LTFV. To arrive at this understanding, I rely on evidence of record regarding the volumes of imports, the pricing of imports, the relation of purchaser demand for the imports to purchaser demand for the domestic industry's product, the nature of production in the domestic industry (including the industry's capacity utilization rate), and other relevant factors. When evidence is in conflict, I evaluate whether the conflict is important to disposition of the investigation and, if so, I base my determination on that evidence most in keeping with the facts and factual inferences suggested by the record as a whole.

In order to more fully convey the detail and application of this analysis, I have attached copies of the opinions I have written in three recent proceedings before the Commission: Internal Combustion Engine Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final)(May 1988); Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Final)(June 1988); Certain Brass Sheet and Strip from Japan and the Netherlands, Inv. Nos. 731-TA-379 and 380 (Final)(July 1988).

Question 2) Doesn't the attempt to determine what an industry's performance <u>would have been</u> rather than looking at what it actually was create both an excessive burden on parties to a case to produce more information and an inordinate reliance on projections and hypotheses about a counterfactual situation that rests on questionable assumptions?

<u>Answer:</u> I do not believe that attempting to determine what an industry's performance would have been rather than looking at what it actually was creates an excessive burden on parties, nor do I believe that it creates an inordinate reliance on projections and hypotheses about a counterfactual situation that rests on questionable assumptions.

The statute requires the Commission to determine whether or not an industry has been materially injured by reason of the class of imported merchandise determined by the Department of Commerce to have been sold at LTFV. As I indicated in my earlier response, I do not believe that this determination can be made merely by examining the changes that actually took place in the domestic industry over some period of time. Rather, any evaluation of whether material injury was caused by the imports necessarily requires consideration of the way in which the industry at issue performed differently because they were competing against imports of a given volume, price, and quality. Asking what the condition of the industry would have been if they had not had to compete against such imports is simply stating the issue in different

language. That is the essence of the comparative or "but for" approach, but it also is assumed in any approach to causation determinations.

The "but for" approach, like other approaches, uses the information of record in the Commission's investigations. I must, of course, draw inferences to connect facts of record to judgments the statute requires. This is not something peculiar to an explicitly comparative analysis, and I do not believe that any commissioner has paid more careful attention to the facts of record than I have or has more fully articulated the inferences derived from those facts or the relation of the facts and factual inferences to judgments. So far as the comparative or "but for" method incorporates assumptions to assist in analyzing the information of record, these assumptions have been analyzed by the Commission's staff and are, I believe, less questionable and more open to examination than are those underlying other methods for deciding investigations before the Commission.

As to the issue of burden on parties, it is important to emphasize that the comparative analysis I have used does not require any party to prove that something that did not happen would have (or, conversely, that something that happened would not have happened) in the absence of the unfairly traded imports. The analysis is applied to facts in the record and is useful in analyzing those facts.

Finally, I do not believe that the comparative approach entails any excessive burden for the parties to our investigations. I am sensitive to concerns about the cost borne by parties to our investigations and by the government, but I do not believe that my analysis of investigations has added to that cost. The frequent appearance of economists in hearings before the Commission is not evidence of a new burden associated with a comparative analysis. Parties in Title VII cases have been represented before the Commission by economists for some time. The Commission has long assigned an economist from the Office of Economics to each Title VII case to provide advice and other assistance to the Commission concerning the economic issues that invariably arise in such cases. Given that the Commission's mandate is to examine economic effects, economists seem well suited to contribute to the Commission's evaluation of the cases. Although I cannot say with certainty whether my disposition of investigations has added to parties' costs during the past few months, I do believe that the analysis of the evidence before us in more explicit terms ultimately will clarify the nature of Commission decisions and reduce costs to parties.

Question 3) How do you determine elasticity figures? Who develops Commission estimates? On what are they based? Can you address this question using examples from recent cases?

Answer: An understanding of the response of market participants to changes in price is important in determining injury in Title VII and other cases before the Commission because it relates volume to price. Both volume and price are elements of the Commission's analysis. Evidence regularly is offered in our proceedings on the role of price in purchasing decisions for the product at issue. Elasticities are one means by which such evidence can be discussed. Elasticities are a measure of the response of buyers and sellers to changes in price. For instance, if the price of a good increases by one percent, an elasticity of demand of, say, two, indicates that consumers will buy two percent fewer units of the good.

Although a reasonable estimation of elasticity can be made by anyone familiar with a product's characteristics and uses, the nature of its production, and similar facts, to improve confidence in the elasticity estimates at the Commission the estimation of elasticities is performed by skilled economists who exercise judgment that reflects years of experience and training. The ITC's Office of Economics assists Commissioners in understanding how buyers and sellers reacted to price changes by reporting ranges in which demand, supply, and substitution elasticities are believed to fall. In some cases, elasticities are estimated econometrically, using statistical methods to analyze large amounts of information relevant to the product investigated. More often, elasticity estimates are based judgmentally on what is learned in the investigation about the behavior of consumers and producers. For instance, demand elasticities are larger the greater is the ability of consumers to substitute other products that serve the same or closely related purposes. The prevalence of substitute products is explored routinely and carefully as part of the staff investigation. Supply elasticities are larger the lower the capacity utilization, the easier it is to shift resources into and out of a production process, and the more important are other (non-U.S.) markets for the producing industry. The elasticity of substitution between two products is greater the closer the two products are in function.

Memoranda from the ITC's Office of Economics assist commissioners in understanding how buyers and sellers reacted to price changes by reviewing information relevant to assessment of elasticities and reporting ranges in which demand, supply, and substitution elasticities are believed to fall. By reporting broad ranges, the Office of Economics properly avoids false precision. Similarly, qualitative, non-numeric characterizations of the sensitivity of buyers and sellers to price changes also avoid false precision. Since the Commission is not required to calculate the exact amount of injury from particular trade practices (as courts might in civil actions where monetary damages payments are in issue) but instead is required only to make threshold determinations regarding the presence of material injury in Title VII cases (or other standards of injury in other types of cases), the ranges reported by the Office of Economics, although often broad, usually are adequate.

In Title VII cases, the Office of Economics reports its elasticity range estimates in pre- and post-hearing memoranda, and explains the factual and investigative bases for the estimates. Parties to each case are afforded an opportunity to comment at the hearing and in post-hearing submissions on the validity of the Office of Economics estimates. These submissions frequently bring to light additional facts that bear on the ranges reported in the Office of Economics' memorandum. The Office of Economics incorporates the information from the parties in preparation of its post-hearing memorandum.

The individual commissioners may, of course, conclude that other record information is in conflict with the ranges estimated by the Office of Economics and is more probative of the manner in which participants in the particular markets examined respond to changes in the price of products relevant to the investigation. Given the care with which the Office of Economics prepares its estimates and the breadth of the elasticity ranges that are estimated, however, I would not expect this to occur frequently. Even so, in some investigations I have drawn such a conclusion from the record before me.

Question 4) What is your reaction to the Court's remand in "Cold-Rolled Carbon Steel Plates and Sheets from Argentina?" In particular, do you agree with its analysis of Commissioner Brunsdale's opinion and its comments on the elasticity data she used?

Answer: I agree with the Court's analysis of Commissioner Brunsdale's opinion and the validity of the elasticity data used by Commissioner Brunsdale in her opinion. The Court noted that the use of elasticities in "causation analysis has the potential for explaining, within the confines of the statutory framework and in an improved manner, how less than fair value imports affected the domestic industry . . . ." USX Corporation v. United States, 682 F. Supp. 60, 69 (Ct. Int'l Trade 1988). The Court went on to find, however, that the use of this approach in that particular case was flawed because it relied on "an elasticity estimate which the determination . . . [did] not link to the specific facts of . . . [the] case". Id. I agree with both of these conclusions.

Question 5) What happens to your model if the elasticity assumptions are wrong?

Answer: For purposes of clarification, I note that my method of analysis does not depend upon elasticities per se. Rather, as my answers to Questions 1) and 3) suggest, I attempt to draw inferences concerning a number of facts relevant to an assessment of the impact of less than fair value imports on the domestic industry. For comparative and other purposes, economists often attempt to quantify their own inferences concerning certain of these facts, i.e., to describe their conclusions in the form of an elasticity. I believe that such quantifications can be very useful in the Commission's work, and my method of analysis considers them to the extent that they are available. However, I do not view such information uncritically. I take elasticities into account only when they are probative evidence in the case before me; in certain cases, I have concluded that the elasticity data did not in fact meet that standard.1/ Of course, my method of analysis, like any other method of analysis, will lead me to incorrect conclusions if I do not draw correct inferences concerning the relevant facts.

Question 6) Explain the role dumping margins play in your analysis.

Answer: In most cases, dumping margins reported by the International Trade Administration of the Department of Commerce are a measure of the proportional difference between the price of the unfairly traded product in the exporter's home market and in the U.S. market.2/ The prices are measured on an ex-factory basis (from sale at the factory). Dumping margins, although not perfect measures, are the best information before the Commission on the magnitude of the difference between the home market price and export price of the dumped product.

1/ See, e.g., Certain Granite from Spain and Italy, Inv. Nos. 731-TA-381 and 382 and 701-TA-289.

2/ In some cases, the price comparison is between a third market and the U.S. market. In other cases, the dumping margin is based on constructed value.

It is important for the Commission to understand the effects of dumping on the price of the dumped product in the U.S. market. It is through this price effect that volume and price in the like product market are altered. Changes in the price and volume of the like product, in turn, convey injury to the U.S. industry. Dumping margins are among the information relevant in making such an assessment. Other essential information includes the relative importance of the home market and the U.S. market to the less-than-fair-value exporter, and the relative response of consumers in the home and U.S. export markets to changes in the price of the LTFV product. The Office of Economics has prepared an analytical report, entitled Assessing the Effects on the Domestic Industry of Price Dumping, that explains in detail the relation of the dumping margin to the effect of dumping on the price of the LTFV product in the U.S. market.

Question 7) What is the statutory basis for referring to dumping margins?

Answer: First, the Court of International Trade has, on two occasions, stated that the Commission may, pursuant to 19 U.S.C. §1677(7)(C)(1), take dumping margins into account as a relevant economic factor bearing upon the state of the domestic industry.3/

Further, the use of dumping margins comports with the apparent intent of Congress in enacting Title VII, as revealed in the relevant legislative history. When Congress amended Title VII in 1979 and crafted the particular language that, with minor amendments, governs the Commission's determinations today, Congress indicated that it did not intend to make any major change in the way the Commission interpreted the antidumping law.4/ The Commission's approach to antidumping investigations immediately prior to 1979, while not absolutely uniform, sought to address the effects of dumping, often through analysis of dumping margins. To that end, the Commission explicitly asked what injury was caused by dumping, as reflected in the margins set by Commerce, and what injury instead was caused by other attributes of the imports.5/ The published legislative history of the 1979 amendments suggests that this is the appropriate inquiry.6/

The use of dumping margins is also consistent with the antidumping code of the General Agreement on Tariffs and Trade ("GATT"). This is significant because the antidumping law under which the Commission conducts its investigations is intended to implement and be consistent with GATT.7/ Of course, in any instance where GATT and Title VII of the Tariff

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3/ See Copperweld Corp. v. United States, __ C.I.T. __, slip op. 88-23 (Ct. Int'l Trade, February 24, 1988); Hyundai Pipe Co., Ltd. v. U.S. Int'l Trade Commission, __ C.I.T. __, 670 F. Supp. 357 (Ct. Int'l Trade 1987).
4/ S. Rep. No. 249, 96th Cong., 1st Sess. at 57, 74 (1979).
5/ See, e.g., Metal-Walled Above-Ground Swimming Pools from Japan, Inv. AA1921-165, USITC Pub. 821 (June 1977); Welded Stainless Steel Pipe and Tube from Japan, Inv. No. AA1921-180, USITC Pub. 899 (July 1978).
6/ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. at 74-74 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. at 46-47 (1979). See also S. Rep. No. 1298, 93rd Cong., 2d Sess. at 179 (1974) (discussion of purpose of Antidumping Act of 1921).
7/ S. Rep. No. 249, 96th Cong., 1st Sess. at 87 (1979); Algoma Steel Corp. v. United States, __ C.I.T. __, slip op. 88-74 (Ct. Int'l Trade, June 8, 1988) at 13, n. 6.

Act diverge, it is the U.S. law which controls the Commission's decisions. In general, however, the GATT and Title VII are to be construed as being consistent in the absence of clear evidence to the contrary. The parties to GATT have undertaken to impose antidumping duties only when it is demonstrated that "dumped imports are, through the effects of dumping, causing injury".8/ Information on dumping margins facilitates an analysis of this question.

Question 8) Do you accept the margins calculated by the Commerce Department and use them? Do you propose any alternative to them?

Answer: I accept the margins calculated by the Department of Commerce and do not propose any alternative to them.

Question 9) Do you believe that it is appropriate for the Commission to make a negative injury determination in the face of increasing imports based on a judgment that were it not for the dumping, any sales not made by the importer would have been made by other importers instead of by the domestic industry?

Answer: Yes, I do believe that, with sufficient evidence, a negative determination may be appropriate in these circumstances. If unfair trade practices cause material injury to our industries, then they are entitled to the protection of our trade laws. If they only hurt other foreign producers, however, and do no harm to any industry in the United States, then there is no basis for imposition of dumping duties.

Under the assumptions of the question, the domestic industry does not appear to be injured by the marketing practices of the importers in question. The domestic industry is selling the same amount at the same price as if there had been no unfairly traded imports. Under these hypothetical facts, the domestic industry has lost no sales. The relevant provisions of the Tariff Act of 1930 suggest that the mere presence of LTFV imports in the United States will not of itself constitute evidence of injury to the domestic industry. Thus, for instance, Section 771(7)(C)(iii)(I) of the Tariff Act explains that the Commission should assess the impact on the domestic industry by looking at, among other things, its "actual and potential decline in output, sales, market share...."

Question 10) Suppose you were a steel producer, and your salesmen just told you that you had lost two orders, each for 10,000 tons of your product, because the sellers each offered their product for $10 per ton less than you could sell it for. One order was lost to a foreign producer that the Commerce Dept. had just determined was dumping at a rate of one percent. The other order was lost to a foreign producer that was found to be dumping at a rate of fifty percent. As that businessman, would you feel that you were less injured by the loss of the 10,000 ton order that was dumped at one percent than you were by the loss of the 10,000 ton order dumped at fifty percent? Why would the size of the dumping or subsidy margin make a difference in the extent of injury suffered by the U.S. industry?

8/ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("GATT Implementation Agreement"), Art. 3, Sec. 4.

Answer: As the steel producer I, of course, would feel equally injured by any lost sale whatever the dumping margin. Whenever a domestic business loses a sale because of unfair trade practices, those practices have injured that business. That loss should be included in the Commission's injury determination.

It is therefore important that the Commission have a way to determine how many sales have been lost because of those unfair practices. That is where the dumping or subsidy margin becomes relevant. I care about margins because a larger margin generally causes more lost sales. Margins are especially useful in investigations in which credible information on specific lost sales is difficult to acquire.

RESPONSES TO QUESTIONS FROM SENATOR HEINZ

Second Set of Questions and Responses.

Question 1. Is it the intent of Congress that the material injury standard in the Trade Agreements Act of 1979 be any higher than the earlier injury standard in prior law?

Answer: No, it is not. Congressional intent is that the standard of injury established in the 1979 act be the same as the standard utilized in the Commission's determinations prior to 1979.

Question 2. Do you think the standard for a preliminary determination of injury in a dumping or CVD case is a lower standard than the final determination in the same case?

Answer: I do not think that the standard for a preliminary determination of injury in a dumping or CVD investigation is a lower standard than that employed in a final determination in the same case. The standard for assessing injury is the same in a both final and preliminary determinations. In a preliminary determination under 19 U.S.C. §1673b (a), however, the quantum of evidence necessary to establish that injury is less. In a preliminary investigation, the Commission must decide only whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded.

Question 3. Do you think the ITC is or should be an agency involved in the making of trade policy?

Answer: The ITC is an independent, bipartisan, quasi-judicial, investigative and fact finding agency. It is not charged with a policymaking or advocacy role. The Commission should only be involved in trade policy in a limited, supporting role assisting Congress and the U.S. Trade Representative with specifically requested research on particular questions on trade. The Commission also plays a role that may be thought similar to support of trade policymaking when its actions take the form of a recommendation to the President. Under Section 201 of the Trade Act of 1974, 19 U.S.C. §2251(d)(1), the Commission is directed to make recommendations to the President regarding relief for industries seriously injured by increasing imports.

Question 4. Would you construe section 337 of the Tariff Act of 1930 broadly to include as violators cases of predatory practices against American industries as well as the patent infringement cases that have traditionally been brought under that section?

Answer: Section 337 of the Tariff Act of 1930, 19 U.S.C. §1337(a), prohibits unfair methods of competition and unlawful acts in the importation of articles into the United States or the sale of such articles in the United States. In addition to violations of intellectual property rights, such as patents, copyrights, or trademarks, unfair methods of competition or unfair acts that restrain or monopolize trade and commerce in the United States -- such as predatory pricing -- are unlawful under Section 337 of the Tariff Act of 1930. Congress emphasized the scope of this section in the recently passed Omnibus Trade and Competitiveness Act of 1988, creating a separate standard for infringement of patents, copyrights, registered trademarks, or mask works, from the standard applicable to all other unfair acts.

Question 5. Do you think the ITC should exercise its authority to issue rules or regulations if that seems an appropriate way to deal with a trade problem (usually a patent infringement problem)?

Answer: Section 337 of the Tariff Act of 1930 grants the Commission rulemaking authority. Rulemaking may be the most appropriate way to address certain trade problems stemming from patent infringement. Recently, for example, the Commission considered in the context of a specific proceeding under Section 337 whether to impose sanctions for certain misrepresentations. The Commission had not, however, previously spelled out the standard it might use. A rulemaking proceeding that allowed comment from all interested persons should be suited to identification of the appropriate standard to be applied in such situations.

Question 6. Several recent section 337 cases have raised the question of whether a domestic industry in fact exists if actual production of the product occurs overseas, with such elements as design, engineering, packaging, shipping, marketing, and advertising done in the U.S. Under what circumstances do you believe a U.S. industry would exist?

Answer: I believe that if significant value added comes from the U.S. operations, a domestic industry may exist even though there is no domestic manufacturing. In past Commission investigations, the Commission has determined that a significant domestic investment in marketing, packaging or engineering would be sufficient to constitute a domestic industry in the absence of domestic manufacturing. This matter has been clarified further by the declaration in the Omnibus Trade and Competitiveness Act of 1988 that, for proceedings under Section 337 involving claimed violations of intellectual property rights, a domestic industry exists when there is significant investment in plant and equipment, significant employment of labor or capital, or substantial investment in engineering, research and development, or licensing.

Question 7. What criteria would demonstrate to you a "threat of serious injury"?

Answer: Under 19 U.S.C. Section 2251(b)(2)(B), the criteria that would demonstrate a "threat of serious injury" are a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, employment or increasing underemployment in the domestic industry concerned.

Question 8. How would you define the relevant "domestic industry" in a factual situation in which a large part of the production of a particular finished product is subcontracted?

Answer: Section 771(4)(A) of the Trade Act of 1930, as amended, 19 U.S.C. Section 1677(4)(A), states in pertinent part: "The term 'industry' means the domestic producers as a whole of a like product." Under this provision, the definition of the domestic industry depends on specification of the like product. If the imported product is a final product, inclusion of subcontractors in the domestic industry along with domestic producers of the final product might be appropriate, for example, where the subcontractor produces an essential part of the final product and that part is useful solely in the final product.

Question 9. Do you believe that an industry already damaged by a recession is statutorily more vulnerable to injury from imports?

Answer: This issue generally has arisen in proceedings under the section 201 of the Trade Act, 19 U.S.C. §2251. In these "escape clause" investigations, the Commission must determine whether the subject imports are a "substantial cause of serious injury" which in turn is defined as "a cause which is important and not less than any other cause." 19 U.S.C. §2251(b)(1), (4). Section 1401 of the Omnibus Trade and Competitiveness Act of 1988 will add Section 202(c)(2)(A) to the Tariff Act to provide that, when comparing injury by reason of the imports to other sources of injury, the Commission is to examine the relevant industry during the entire course of its business cycle and not aggregate recession-related causes as a single cause of injury. There is no similar statutory provision respecting recession for investigations under Title VII of the Tariff Act of 1930 or Section 337 of that Act.

Question 10. If foreign government subsidies are but one of several factors which could possibly be causing injury to a domestic industry do you believe the Commission should make an affirmative preliminary determination in a countervailing duty case?

Answer: Congress has made plain its intention that the Commission only consider whether the subsidies are causing material injury to the domestic industry and not weigh the relative significance of other possible causes of injury to the domestic industry.9/ Pursuant to section 703(a) of the Trade Act of 1930, 19 U.S.C. §1673b(a), the Commission must rule in the affirmative in a preliminary countervailing duty investigation if there is a "reasonable indication" that an industry in the United States is materially injured, threatened with material injury, or hindered in its establishment, by reason of the subsidized imports. The United States Court of Appeals for the Federal Circuit in American Lamb Co. v. United States, 785 F.2d 994, 1001 (1986),

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9/ See S. Rep. No. 249, 96th Cong., 1st Sess. at 87 (1979).

approved the long-standing Commission practice of issuing affirmative preliminary determinations unless (1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of material injury, and (2) there is no likelihood that evidence of such injury will appear in a final investigation. If there is evidence of record indicating the possibility that a subsidy could be causing material injury, that would appear to warrant an affirmative preliminary determination under the American Lamb standard.

Question 11. Under what circumstances do you believe that the Commission should self-initiate a case under section 337 of the Tariff Act of 1930?

Answer: My understanding is that, in the history of the Trade Act, the Commission has initiated on its own only two cases under section 337.10/ In the first case, the United States Department of Agriculture held a patent which was allegedly infringed by a product imported into the United States. In the second case, certain unfair trade practices came to the attention of the Commission during a separate Section 337 investigation. I believe that initiation of investigations by the Commission in these cases was appropriate. In most instances, however, the initiation of petitions by private parties is more appropriate as such parties are more likely than the Commission to have knowledge of the allegedly unfair trading practice and information relevant to its effect on American industry. Further, these investigations often resemble private property rights disputes in which the Commission more appropriately can function as investigator and adjudicator rather than initiator.

Question 12. What criteria would you use in determining what import relief is necessary to prevent or remedy an injury in an escape clause case?

Answer: The criteria the Commission uses must to a certain extent be based on the record developed in a particular case. In general, however, the statute requires the Commission to express its views on the steps that are "necessary to prevent or remedy such injury." 19 U.S.C. §2251(d)(1)(A). The Commission should look carefully at the cause and nature of the injury, and assess the manner in which different forms of relief might allow the domestic industry to avoid or reverse the injury or modify its operations to prevent or limit further injury. In this regard, Congress recently has emphasized that the purpose of relief under the escape clause is to promote "positive adjustment" by the affected domestic industry to competition from imports.

Question 13. Do you believe a Commissioner who has made a negative determination in an escape clause case should participate in making a remedy recommendation if the Commission has found affirmatively?

Answer: The trade legislation recently passed by both houses of Congress provides that only those commissioners who vote affirmatively in the injury phase of an escape clause case may vote in the remedy phase.

10/ See Perry, Administration of Import Trade Laws by the United States International Trade Commission, 3 B.U. Int'l L.J. 345, 433 & n.441 (1985).

Question 14. Do you believe the Commission should cumulate imports of like products in dumping and CVD cases proceeding at the same time? (cross-statute cumulation)

Answer: The United States Court of Appeals for the Federal Circuit in Bingham & Taylor Division, Virginia Industries, Inc. v. United States, 815 F.2d 1482 (1987), held that under the applicable statutes the Commission normally should cumulate imports of like products in simultaneous dumping and countervailing duty proceedings. Commission practice since Bingham & Taylor has, I believe, followed the rule set down in that case.

Question 15. Do you believe it is either appropriate or consistent with the law and Congressional intent for the Commission to establish a specific import penetration ratio, below which injury would not be found?

Answer: No.

Question 16. The U.S. has lost 600,000 jobs in manufacturing since 1981. Most of these jobs have been lost in heavily import-impacted industries. Do you see a role for effective import relief under existing trade laws in stemming this tide of job losses?

Answer: Plainly, import relief is in large measure intended to protect domestic employees against the loss of jobs they now hold. Title VII, for example, requires explicit consideration of the effects of unfairly traded imports on employment in the domestic industry. Moreover, in one area, the Commission does have a direct role in providing job assistance: in an escape clause case the Commission can recommend job assistance as a remedy for injury from imports. This does not, of course, mean that import relief always is effective in preserving jobs in the affected domestic industry, but that should, at least to some extent, be a general consequence of import relief.

Question 17. Do you believe there is a need to reform some of our trade remedy laws in order to deal with current conditions of competition that have contributed to the $170 billion deficit last year?

Answer: The International Trade Commission does not play a direct role in creating trade policy, but the officials principally responsible for crafting our trade policy -- Congress and the President -- have worked for much of the past three years to reform our trade remedy laws. Congress has, within the last few days, passed the Omnibus Trade and Competitiveness Act of 1988 and the President has announced his intention to sign this bill into law. This legislation effects a number of changes in the trade law. Along with changes in macroeconomic factors such as the value of the dollar relative to currencies of other countries and in the cost and quality of many domestic products, the new law is widely expected to promote increased competitiveness of domestic products both at home and abroad.

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

JUN 23 1988

Honorable Lloyd Bentsen
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ronald A. Cass, who has been nominated by President Reagan for the position of Commissioner of the International Trade Commission.

The report has been reviewed and advice has been obtained from the International Trade Commission concerning any possible conflict in light of its functions and the nominee's proposed duties. Based thereon, it appears that Mr. Cass will be in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Frank Q. Nebeker
Director

Enclosure

SALVATORE R. MARTOCHE

PERSONAL DATA

Residence: 2312 Glasgow Road Telephone: (703) 765-1839
Alexandria, VA 22307

Marital Status: Married to Mary Dee (Benesh) Martoche, an attorney
Father of three children: Amy, 17, Claire, 15, and Christopher, 13

EDUCATION

B.S., 1962, Canisius College, Buffalo, New York
J.D., 1967, University of North Dakota, School of Law
Harvard University, 1987, Program for Senior Managers in Government, John F. Kennedy School of Government

EMPLOYMENT INFORMATION

Acting Assistant Secretary (Enforcement)
U.S. Department Of The Treasury, June 1988 to present

Previous Employment Information:

Assistant Secretary of Labor, for Labor-Management Standards, U.S. Department of Labor, June, 1986, to present
Member, Board of Governors, Dept. of Labor Academy, 1987 - 1988

United States Attorney, Western District of New York, 1982-1986
Member, Attorney General's Advisory Committee, 1983-1986; Vice Chairman, 1984; Chairman, 1985

Attorney engaged in private practice, 1969-1982
Concentration on third-party neutral matters (arbitration/fact finding), administrative proceedings, and civil and criminal litigation

Administrator: Erie County Bar Association, Pre-Trial Services Agency, Inc., 1972-1981
Erie County Bar Association, Emergency Defense Program
Erie County Bar Association, Project Capable
Administered programs providing basic legal services to local residents through county bar association

Assistant Counsel to the Majority, New York State Senate, Albany, New York, 1974-1982
Criminal justice specialist; drafted legislation and negotiated negotiated extensively with State Assembly and Executive Branch

Legal Aid Bureau of Buffalo, Inc., 1967-1971
Civil Division and Public Defender Division

PAST LAW RELATED ACTIVITIES

Lecturer, Criminal Justice Program, Buffalo and Erie County Police Academy, 1969-1981
Lecturer, Magistrates Training Program, sponsored by the Office of Court Administration of New York, 1977-1981
Lecturer, New York State Defenders Association, 1979-1980
Lecturer, New York State Division of Criminal Justice Services, Bureau of Prosecution and Defense Services, 1977-1982
Instructor of Law, Canisius College, Buffalo, New York, summers 1974-1978

Member, Board of Directors, Legal Aid Bureau of Buffalo, New York, 1980-1982
Reporter, Federal Speedy Trial Project, Western District of New York, 1976-1978
Special Prosecutor, Jefferson County, New York (Gilbert murder case), 1976
Instructor of Business Law, Bryant & Stratton Business Institute of Buffalo, 1973-1976
Special Counsel, Research and Planning Council, 1972
Member, Drug Task Force, Research and Planning Council, 1973

PAST LABOR RELATED ACTIVITIES

Lecturer, Cornell University, WNY Industrial and Labor Relations Extension, 1979-1980
American Arbitration Association, Labor Panel-Commercial Panel
Better Business Bureau, Consumer Arbitration Panel
Federal Mediation and Conciliation Service, panel member
New York State PERB, panel member
New York State Mediation Board, panel member
Society of Professionals in Dispute Resolution

PAST PERSONAL ACTIVITIES

William Paca Anti-Defamation Society, Board of Directors
National Conference of Christians and Jews, Board of Directors
Board of Trustees, Nardin Academy of Buffalo
Erie County Charter Revision Commission
United Way of Buffalo and Erie County, Inc.--
Board of Directors; Planning & Community Services Group, Executive Committee; RPC Community Services, Inc., Board of Directors
Board of Directors, Erie County Republican Lawyers Club
Board of Trustees, Canisius College
Board of Regents, Canisius College
Canisius College Alumni Association; Past President
DiGamma Honor Society, Canisius College; Life Member and Past Grand Master
Justinian Legal Society of Buffalo; Past Secretary
Board of Directors, Catholic Lawyers Guild
Board of Directors, North Buffalo Youth Center
Dwight D. Eisenhower Club; Past President

PROFESSIONAL MEMBERSHIPS

New York State Bar Association
American Bar Association
Erie County Bar Association
Member of Bar of: State of New York
United States Supreme Court
United States Court of Appeals, Second Circuit
United States District Court, Western District of New York
United States Tax Court

AWARDS AND DISTINCTIONS

U.S. Department of Labor, Hispanic Manager's Award, 1987
Canisius College, Distinguished Alumni Award, 1986
Federation of Italian American Societies, Americanism Award, 1984
National Columbus Day Committee, Man of the Year, 1983

State University College at Buffalo, Criminal Justice Alumni-Outstanding Achievement, 1983
National Conference of Christians and Jews, Brotherhood Award, 1981
William Paca Anti-Defamation Society, Man of the Year, 1980
LaSalle Medal, Canisius College-Outstanding Alumni, 1979
New York State Bar Association-Outstanding Contribution to the Delivery of Criminal Justice Services, 1979
New York State Sheriff's Association-Friend of Law Enforcement Award, 1978
Dwight D. Eisenhower Club-Man of the Year, 1973
Addicts in Distress-Volunteer of the Year, 1974
Governor Hugh L. Carey's Executive Advisory Commission on the Administration of Justice, Commission Member, 1981-1982
Advisory Committee on Criminal Law and Procedure, New York State Office of Court Administration, 1979-1982

PUBLICATIONS

"Workforce 2000: The Lady or the Tiger?", WESTERN NEW YORK, MAGAZINE, Pages 44-45, November 1987
"War On Drugs Takes Character, Not Laws", THE BUFFALO NEWS, Page B-3, September 17, 1987
"You Can Take The Boy Out of Buffalo . . .", THE BUFFALO NEWS, Op Ed page, February 10, 1987
"The Federal Speedy Trial Act, An Introduction and Guide", in The National Journal of Criminal Defense, Vol. 4, Number 2, 1979
Guilty of Poverty: A study of bail and pretrial detention in Buffalo, N.Y. with B. Grahl, 1977

CONGRESSIONAL TESTIMONY

U.S. House of Representatives, House Committee on Appropriations, Subcommittee on Labor-Health and Human Services-Education, Re: Office of Labor-Management Standards Budget, 1987
U.S. Senate, Judiciary Committee, Subcommittee on the Constitution Re: Federal Speedy Trial Act, 1979
U.S. Senate, Judiciary Committee, Subcommittee on Administrative Practice and Procedure, Re: Federal Witness Protection Program, 1978

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

JUL 18 1988

Honorable Lloyd Bentson
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Salvatore R. Martoche, who has been nominated by President Reagan for the position of Assistant Secretary of the Treasury for Enforcement.

We have reviewed the report and have also obtained advice from the Department of the Treasury concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Based thereon, we believe Mr. Martoche is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Frank Q. Nebeker
Director

Enclosure

DON E. NEWQUIST

Biographical Sketch

Personal:	Address:	300 W. 15 Street, Suite 875 Austin, Texas 78701
	Birthplace:	Stamford, Texas
	Birthdate:	August 23, 1943
	Marital Status:	Divorced

Professional History

CONSULTANT, Valero Energy Corporation and Texas Chamber of Commerce
2/88-Present

Consultant to Valero Energy and Texas Chamber of Commerce. Actively involved in developing an economic development program for the State Chamber and managing the 15th Annual Japan-Texas Conference, a joint program of the Texas Department of Commerce and the State Chamber.

VALERO ENERGY CORPORATION (VLO-NYSE), SAN ANTONIO, TEXAS
1974-Present

A diversified energy company with assets of over $2 billion and 2,200 employees in Texas, Indiana, Colorado, Oklahoma, and Louisiana. Involved in the exploration, production, refining, marketing, and transportation of oil and natural gas as well as a coal mining and oil field supply.

As Senior Vice President, Corporate Relations from 1982 until February 1988, responsible for government relations, media relations, community relations, employee communications, investor relations, and ad valorem tax departments.

Served as Vice President, Administration from 1978-1982. Planned and directed the company reorganization and relocation from Houston to San Antonio which involved the relocation of 300 employees and hiring of an additional 600. Retained and supervised law firms in Austin and Washington to assist with company's legislative and regulatory program. Organized, staffed, and supervised company's aviation, security, and ad valorem tax departments.

In 1980, elected a Vice President of company and an officer and director of major subsidiary companies.

Entered as Assistant Vice President, Public Affairs in 1974. Promoted to Vice President, Public Affairs and Employee Relations in 1975.

DENVER CHAMBER OF COMMERCE, DENVER, COLORADO
1972-1974

As General Manager, directed and managed staff of 36 and budget in excess of $1 million to fund personnel and programs serving Denver metropolitan area. Personally staffed a program to identify emerging leaders in Denver and encourage their potential to seek public office and assume

role of leadership. Primary thrust of chamber's program was government related to state of Colorado, city and county of Denver, Colorado Congressional Delegation, and economic development of metropolitan Denver area. Established and staffed first International Trade Department in Chamber.

UNITED STATES CHAMBER OF COMMERCE, DALLAS, TEXAS
1972

As Legislative Political Affairs Manager, Southwestern Division, responsible for Congressional Action Program in Texas, New Mexico, and Colorado. Established new political action programs with local chambers and associations and managed existing programs to assist candidates in their campaigns for Congress.

CORPUS CHRISTI CHAMBER OF COMMERCE, CORPUS CHRISTI, TEXAS
1969-1972

As Assistant General Manager, managed organization of 21 employees and served as liaison between Chamber and local, state, and federal governments concerning legislative affairs. Directed and supervised special projects and activities in industrial development, military and aviation relations, and non-profit fundraising. Secured passage of bill creating a state-supported upper-level university. Coordinated Chamber/Port of Corpus Christi Program to stimulate international trade.

UNITED STATES NAVY, Domestic and Foreign Assignments
1967-1969

United States Navy Officer Candidate School, Newport, Rhode Island. Appointed by Secretary of Navy, May 1968, Public Affairs Specialist. Served as Media Liaison Officer for Commander, Seventh Fleet in Saigon, RVN. Participated in daily briefings of the press corps and assisted in preparation of Navy releases.

As Assistant Director of Navy Public Affairs Office (Midwest, Chicago), dealt directly with radio and television stations throughout a 17-state area and national media based in Chicago on behalf of the Chief of Information, Department of the Navy.

EDUCATION

McMurry College, BBA, Marketing, 1966

Special Coursework:

Texas Christian University, Institute of Organizational Management
Texas A&M University, Basis Course in Industrial Development

RELATED ACTIVITIES

President and Member, Board of Directors and Executive Committee
South Texas Chamber of Commerce

Member, Finance Council
Texas Democratic Party

Member, Board of Directors
Arts Council of San Antonio

Chairman, Government Affairs Council
Greater San Antonio Chamber of Commerce

Treasurer and Member, Board of Directors
Jefferson-Lincoln Alliance of Texas

Member, Board of Directors and Executive Committee
World Affairs Council of San Antonio

Chairman, Budget Committee
St. Luke's Episcopal Church

Member, Board of Directors and Investment Committee
Alamo Community Collect Foundation

Member, Board of Directors
Lutheran General Hospital Foundation

Past Member, Board of Directors
Independent Petroleum Association of America

Member, Steering Committee
Southern Gas Association

Member, Speakers Club
Democratic Congressional Campaign Committee

Member, Business Council
Democratic National Committee

United States
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AUG 4 1988

Honorable Lloyd Bentsen
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Don E. Newquist, who has been nominated by President Reagan for the position of Commissioner, International Trade Commission.

The report has been reviewed and advice from the International Trade Commission has been obtained concerning any possible conflict in light of the Commission's functions and the nominees proposed duties. The Commission has advised that Mr. Newquist owns farm property which he rents, and that he has entered into a fixed rent arrangement with his tenant to avoid any potential or appearance of conflict of interest.

Based on the foregoing, we believe that Mr. Newquist is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Frank Q. Nebeker

Frank Q. Nebeker
Director